

30 March 2022

MODIFICATION 0792S
AMENDMENTS TO COST RECOVERY UNDER OAD
EXPLANATORY TABLE

Reference	Explanation
OFFTAKE ARRANGEMENTS DOCUMENT	-
SECTION B – CONNECTION FACILITIES	-
Amended paragraph 2.4.3	Amended to include requirement that the where second party's property is damaged as a result of an emergency: <ul style="list-style-type: none">- the first party is only required to take such action as is required to make the second party's property safe; and- the first party is to reimburse the second party where the second party determines further work is required in relation to its property following any emergency and/or reinstatement of its Connection Facilities by the first party.
SECTION L - COST RECOVERY AND INVOICING	-
New paragraph 2.3.1	The Recovering Party is to give advance notice to the Reimbursing Party whenever it anticipates a right to recover costs will arise.
New paragraph 2.3.2	The Recovering Party is to give such advance notice as soon as practicable following it anticipating the right to recover costs; which is the case of costs recoverable in relation to a

	Maintenance Programme is as soon as reasonably practicable following the sharing of the programme.
New paragraph 2.3.3	The Recovering Party must also give notice (at the same time as giving advance notice of the right to recover or separately) of the amount it estimates it will be entitled to recover from the Reimbursing Party together with an explanation of the basis on which it has determined such amount.
New paragraph 2.3.4	The Recovering Party must also give notice of any increase in the amount it estimates it will be entitled to recover from the Reimbursing Party together with an explanation of the basis for the increase.
New paragraph 2.3.5	The Recovering Party and the Reimbursing Party must consult on the costs estimate, and the parties shall meet to discuss the costs estimate where the Reimbursing Party requests this.
New paragraph 2.3.6	If the parties are unable to agree on the costs estimate then provide the estimate is calculated on a basis consistent with the costs principles in paragraph 2.2 The Recovering Party is not required to take any positive action in relation to the relevant requirement giving rise to the right of recovery (e.g. not attend site or instruct its contractors accordingly).
New paragraph 2.3.7	The requirement to give advance notice of the right to recover costs is not required in certain situations. The only circumstances where costs may be recovered retrospectively (i.e. in the absence of agreement on a costs estimate (or revised estimate) including are in an emergency situation, or in for extended or non-routine maintenance situations and also where the right to recover could not reasonably be anticipated in advance – but in each case only if the Recovering Party gives notice to the Reimbursing Party no later than 60 Business Days after the event giving rise to the right of recovery.
New paragraph 2.3.8	The Recovering Party must provide the Reimbursing Party with reasonable supporting information to support any amount for which it exercises a right of recovery.
New paragraph 2.3.9	Nothing in the preceding rules allows the Reimbursing Party to delay payment of amounts properly payable to the Recovering Party or to challenge the rates used by the Recovering Party provided these are (where relevant) consistent with the Recovering Party's Condition 4B Statement.

Commented [ML1]: There is no obligation to agree, notion not reflected in legal text.

Commented [Dentons2R1]: Fair comment.

Commented [ML3]: This is the norm under OAD – I'm unclear on what basis we would deviate from this.

Even if we did follow this new process, if NGG couldn't agree with Cadent the costs then we would be able to recover cost reasonably incurred in line with para 2.2.

Commented [Dentons4R3]: I thought the rule here was about ensuring the Recovering Party is not required to do anything in absence of agreement on a costs estimate from the Reimbursing Party.

Commented [ML5]: OAD is clear when costs can be recovered; the legal text is likely to generate confusion.

Commented [Dentons6R5]: See suggested alternative text for L2.3.7, aimed at making clear that in absence of agreed costs estimate costs will not be recoverable unless one of the 3 exceptions apply.